

House Engrossed

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
First Regular Session  
2001

CHAPTER 41

# HOUSE BILL 2085

AN ACT

AMENDING SECTION 12-302, ARIZONA REVISED STATUTES; RELATING TO COURT FEES AND COSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-302, Arizona Revised Statutes, is amended to  
3 read:

4 12-302. Extension of time for payment of fees and costs; relief  
5 from default for nonpayment; deferral or waiver of  
6 court fees and costs; definitions

7 A. The court or any judge may for good cause shown extend the time for  
8 paying any court fees AND COSTS required by law or may relieve against a  
9 default caused by nonpayment of a fee within the time provided by law, but  
10 no fees paid shall be refunded.

11 B. The supreme court shall adopt forms and procedures for applications  
12 for ~~waiver or deferral~~ OR WAIVER of court FEES AND costs.

13 C. Except as provided in subsection E of this section, the court shall  
14 grant an application for deferral of court fees and costs if the applicant  
15 establishes by affidavit, including supporting documentation, that the  
16 applicant either:

17 1. Is receiving benefits pursuant to one or more of the following  
18 programs:

19 (a) The temporary assistance to FOR needy families program established  
20 by section 403 of title 4 of the social security act as it exists after  
21 August 21, 1996.

22 (b) The food stamp program (7 United States Code ~~section~~ SECTIONS 2011  
23 through 2029).

24 (c) The general assistance program pursuant to title 46, chapter 2,  
25 article 2.

26 2. Is receiving benefits pursuant to the supplemental security income  
27 program (42 United States Code, sections 1381 through 1385).

28 3. Has an income that is insufficient or barely sufficient to meet the  
29 daily essentials of life and that includes no allotment that could be  
30 budgeted for the fees and costs that are required to gain access to the  
31 court. In considering insufficient income pursuant to this paragraph, the  
32 court may consider the following as evidence of insufficient income:

33 (a) The applicant has a gross income that as computed on a monthly  
34 basis is one hundred fifty per cent or less of the current poverty level  
35 established by the United States department of health and human  
36 services. Gross monthly income includes the applicant's share of community  
37 property income.

38 (b) The applicant's income is considered to be sufficient, but the  
39 applicant provides proof of extraordinary expenses, including medical  
40 expenses, costs of care for elderly or disabled family members or other  
41 expenses that are deemed extraordinary, that reduce the applicant's gross  
42 monthly income to at or below one hundred fifty per cent of the current  
43 poverty level established by the United States department of health and human  
44 services.

1 D. Upon proof of ~~permanent inability~~ THAT THE APPLICANT IS PERMANENTLY  
2 UNABLE to pay fees or costs, the court shall waive them. FOR PURPOSES OF  
3 THIS SUBSECTION, "PERMANENTLY UNABLE TO PAY" MEANS THE APPLICANT'S INCOME AND  
4 LIQUID ASSETS ARE INSUFFICIENT OR BARELY SUFFICIENT TO MEET THE DAILY  
5 ESSENTIALS OF LIFE AND THE INCOME AND LIQUID ASSETS ARE UNLIKELY TO CHANGE  
6 IN THE FORESEEABLE FUTURE.

7 E. Except in cases of dissolution of marriage, LEGAL SEPARATION,  
8 ANNULMENT or establishment, enforcement or modification of child support, and  
9 notwithstanding subsection ~~C~~ A of this section or chapter 9, article ~~5~~ 4  
10 of this title, if the applicant is an inmate who is confined to a  
11 correctional facility operated by the state department of corrections and who  
12 initiates a civil action or proceeding, the inmate is responsible for the  
13 full payment of actual court fees and costs. On filing the civil action or  
14 proceeding ~~and when monies exist~~, the clerk of the court shall assess and,  
15 WHEN MONIES EXIST, collect as a partial payment of any court fees and costs  
16 required by law a first time payment of twenty per cent. Thereafter the  
17 state department of corrections shall withhold twenty per cent of all  
18 deposits into the prisoner's spendable account administered by the department  
19 until the actual court fees and costs are collected in full. The state  
20 department of corrections shall annually forward any monies withheld to the  
21 clerk of the court of each court of jurisdiction before January 31. If a  
22 prisoner is released before the full fees and costs are collected, the state  
23 department of corrections shall forward the amount of fees and costs  
24 collected through the date of the prisoner's release. The clerk of the court  
25 of each court of jurisdiction is responsible for sending the state department  
26 of corrections a copy of the order mandating the amount of fees and costs to  
27 be paid. This subsection does not prohibit an applicant from filing a civil  
28 action or proceeding if the applicant is unable to pay the filing fees.

29 F. At the time an applicant signs and submits the application for  
30 deferral to the court, the applicant shall acknowledge under oath and sign  
31 a consent to judgment. By signing the consent to judgment, the applicant  
32 consents to judgment being entered against the applicant for all fees and  
33 costs that are deferred but that remain unpaid after thirty calendar days  
34 following the entry of final judgment or order. A consent judgment ~~shall~~ MAY  
35 be entered against the applicant unless ~~either~~ ONE of the following applies:

36 1. THE APPLICANT HAS AN ESTABLISHED SCHEDULE OF PAYMENT IN EFFECT AND  
37 IS CURRENT WITH PAYMENTS.

38 2. A SUPPLEMENTAL APPLICATION FOR FURTHER DEFERRAL OR WAIVER HAS BEEN  
39 FILED AND IS PENDING.

40 ~~1.~~ 3. Pursuant IN RESPONSE to a supplemental request by the applicant  
41 APPLICATION, the court orders that the fees and costs be FURTHER DEFERRED OR  
42 waived or further deferred pursuant to subsection ~~C~~ of this section.

43 ~~2.~~ 4. WITHIN TWENTY DAYS OF THE DATE THE COURT DENIES THE  
44 SUPPLEMENTAL APPLICATION, the applicant EITHER PAYS THE FEES OR requests a  
45 hearing on the court's FINAL order denying final ~~waiver~~ or FURTHER deferral

1 OR WAIVER. IF THE APPLICANT REQUESTS A HEARING, THE COURT SHALL NOT ENTER  
2 A CONSENT JUDGMENT UNLESS A HEARING IS HELD, FURTHER DEFERRAL OR WAIVER IS  
3 DENIED AND PAYMENT HAS NOT BEEN MADE WITHIN THE TIME PRESCRIBED BY THE COURT.

4 ~~G. If the applicant meets the requirements under subsection~~  
5 ~~F, paragraph 1 or 2 of this section, the court shall not institute collection~~  
6 ~~procedures based on the consent judgment until a hearing is held and an order~~  
7 ~~denying waiver and deferral is entered.~~

8 H. G. An applicant who is granted a deferral pursuant to subsection  
9 ~~C of this section OR WAIVER~~ or a party to the action who knows of any change  
10 in the financial circumstances of the applicant shall promptly notify the  
11 court of the change in the applicant's financial circumstances during the  
12 pendency of the action that affects the applicant's ability to pay court fees  
13 and costs. If within ten days after notice and a hearing the court  
14 determines that the applicant's financial circumstances have changed and that  
15 the applicant no longer meets the eligibility requirements under subsection  
16 ~~C of this section~~, the court shall order the applicant to pay the deferred  
17 OR WAIVED fees and costs.

18 ~~F. H. The following court fees and costs may be DEFERRED OR waived~~  
19 ~~or deferred, except that the county shall pay the fees and costs in~~  
20 ~~paragraphs 6 and 7 of this subsection on the granting of an application~~  
21 ~~pursuant to subsection C of this section FOR DEFERRAL OR WAIVER AND AN~~  
22 ~~APPLICANT WHO HAS BEEN GRANTED A DEFERRAL SHALL REIMBURSE THE COUNTY FOR THE~~  
23 ~~FEES AND COSTS IN PARAGRAPHS 6 AND 7 OF THIS SUBSECTION:~~

- 24 1. Filing fees.  
25 2. Fees for issuance of either a summons or subpoena.  
26 3. Fees for obtaining one certified copy of a temporary order in a  
27 domestic relations case.  
28 4. Fees for obtaining one certified copy of a final order, judgment  
29 or decree in all civil proceedings.  
30 5. ~~Sheriff's, marshal's and constable's~~, SHERIFF, MARSHAL, CONSTABLE  
31 AND LAW ENFORCEMENT fees for service of process if any of the following  
32 applies:

33 (a) The applicant established by affidavit that the applicant has  
34 attempted without success to obtain voluntary acceptance of service of  
35 process.

36 (b) The applicant's attempt to obtain voluntary acceptance of service  
37 of process would be futile or dangerous.

38 (c) An order of protection OR AN INJUNCTION AGAINST HARASSMENT in  
39 favor of the applicant and against the party sought to be served exists and  
40 is enforceable.

41 6. The fee for service by publication if service is required by law  
42 and if the applicant establishes by affidavit specific facts to show that the  
43 applicant has exercised due diligence in attempting to locate the person to  
44 be served and has been unable to do so.

1 7. Court reporter's fees for the preparation of court transcripts if  
2 the court reporter is employed by the court.

3 8. Appeal preparation and filing fees at all levels of appeal and  
4 photocopy fees for the preparation of the record on appeal pursuant to  
5 sections 12-119.01, 12-120.31 and 12-2107 and section 12-284, subsection A.

6 ~~I.~~ I. If the case is appealed, the initial ~~waiver or deferral~~ OR  
7 WAIVER remains in effect unless there is a change in the applicant's  
8 financial circumstances. IF A CASE IS APPEALED AN APPLICANT MAY BE REQUIRED  
9 TO SUBMIT TO THE APPELLATE COURT A NEW APPLICATION FOR A DEFERRAL OR WAIVER  
10 OF THE COURT FEES AND COSTS.

11 ~~K.~~ J. If a judgment is rendered for court fees and costs, the court  
12 fees and costs deferred but unpaid and the expenses paid by the county under  
13 this section shall be included in the judgment and shall be paid directly to  
14 the clerk of the court by the party against whom the court fees and costs  
15 were assessed.

16 ~~L.~~ K. Neither A waiver nor ~~deferral~~ of court fees or costs shall NOT  
17 be granted for:

18 1. Matters that are filed as class actions pursuant to rule 23 of the  
19 Arizona rules of civil procedure.

20 2. Civil actions other than ~~domestic relations cases~~ CASES OF  
21 DISSOLUTION OF MARRIAGE, LEGAL SEPARATION, ANNULMENT OR ESTABLISHMENT,  
22 ENFORCEMENT OR MODIFICATION OF CHILD SUPPORT that are filed by persons who  
23 at the time of filing the application are incarcerated as a result of a  
24 felony conviction IN AN OUT-OF-STATE CORRECTIONAL FACILITY OR IN A JAIL  
25 WAITING TO BE TRANSPORTED TO A STATE DEPARTMENT OF CORRECTIONS FACILITY.

26 ~~M.~~ L. This section does not limit the court's discretion in  
27 DEFERRING, waiving, ~~deferring~~ or ordering the county to pay any fees and  
28 costs as may be necessary and appropriate.

29 ~~N.~~ M. For the purposes of this section,:

30 1. "Deferral" means either postponement of an obligation to pay fees  
31 or establishment of a schedule for payment of fees.

32 2. "FURTHER DEFERRAL" MEANS THE ESTABLISHMENT OF A SCHEDULE FOR  
33 PAYMENT OF FEES.

APPROVED BY THE GOVERNOR APRIL 4, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 4, 2001.

Passed the House February 19, 2001,

by the following vote: 48 Ayes,

10 Nays, 2 Not Voting

[Signature]  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate March 28, 2001,

by the following vote: 27 Ayes,

3 Nays, 0 Not Voting

[Signature]  
President of the Senate

Charmine Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of March, 2001,

at 1:30 o'clock P. M.

Stacy Marshall  
Secretary to the Governor

Approved this 4 day of

April, 2001,

at 12:15 o'clock P. M.

[Signature]  
Governor of Arizona

H.B. 2085

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 4 day of April, 2001,

at 4:50 o'clock P. M.

[Signature]  
Secretary of State